WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1972

ENROLLED
SENATE BILL NO. 97

(BY MR. McCOY, MR. DESCENT AND MR. HOBARD)

PASSED MARCH 9, 1972

In Effect 90 DAYS FROM PASSAGE

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-30-72
AN ACT to repeal sections twenty-one and twenty-two, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections nineteen and twenty of said article, relating to the suspension, demotion and discharge of members of the department of public safety; abolishing the board of commissioners of the department of public safety and creating a board of appeals for said department; relating to the rights of replacement appointees to said department; relating to the appointment, qualifications, terms, compensation and expenses of the members of the board of appeals; relating to the composition of and vacancies on said board of appeals; relating to the powers and duties of said board of appeals; relating to appeals to said board of appeals; relating to appeal hearings by said board of appeals and decisions following such hearings; relating to the effect of the sustaining or reversal of an order of the superintendent of the department of public safety relating to transfer of members; and providing for judicial review of a decision by the board of appeals which is adverse to a member of the department of public safety.

Be it enacted by the Legislature of West Virginia:

That sections twenty-one and twenty-two, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections nineteen and twenty of said article be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-19. Suspension, demotion or discharge of members.

1 The superintendent may suspend, demote in rank or
discharge from the service any member of the department of public safety for any of the following causes: Refusing to obey the orders of his superior officer, neglect of duty, drunkenness, immorality, inefficiency, abuse of his authority, interference with the lawful right of any person, participation in political activities, primaries, conventions or elections, or any other cause which may in the opinion of the superintendent be necessary for the good of the service. The superintendent shall cause an investigation to be made when notice of any one or more of such causes is brought to his attention and shall determine whether or not the member should be suspended, demoted in rank or discharged. If the superintendent orders the member suspended, demoted in rank or discharged, a written statement of the charges and a written order of suspension, demotion in rank or discharge shall be delivered personally to the member by his commanding officer, or next in command in the absence of his commanding officer. The superintendent shall explicitly set forth in any such written statement of charges the details giving rise to the cause or causes upon which he ordered such suspension, demotion in rank or discharge. The member may appeal the superintendent's order to the board of appeals created for such purpose, and all of the original papers in such cases shall be delivered by the superintendent to such board, which shall decide such cases in the manner hereinafter provided.

Any person who shall by the superintendent be appointed to membership in said department as a replacement appointee, pursuant to section two, article eleven, chapter six of this code, may at any time be discharged at the will and pleasure of the superintendent without the assignment of cause and without right of appeal to the board of appeals.

The right of a member to appeal suspension, demotion in rank or discharge shall not apply to members who are undergoing basic training at the department of public safety academy.

Except in cases of emergency, no member of the de-
partment shall be transferred without having received
at least two weeks' notice of such transfer.

§15-2-20. Board of appeals created; members, powers and
duties; appeal, hearing and decision.

The board of commissioners, heretofore created in this
article, is hereby abolished, and there is hereby created a
board of appeals composed of five members appointed by
the governor, by and with the advice and consent of
the Senate. Each member shall serve for a term of five
years, except of the members first appointed, one shall
be appointed for a term ending the thirtieth day of June,
one thousand nine hundred seventy-three, and one each
for terms ending one, two, three and fours years there-
after. Vacancies shall be filled for the unexpired term
by appointment of the governor, by and with the advice
and consent of the Senate. Members shall be residents
of the state and no more than three shall be members of
the same political party. A member shall hold no other
office (other than the office of notary public) or employ-
ment under this state during his term, and a member
may be reappointed on the expiration of his term.

As soon as practical after appointment of the board,
the members shall convene on call of the governor and
thereupon and annually thereafter elect a chairman and
such other officers as the board deems necessary. All other
meetings of the board shall be on call of the chairman.

Each member of the board shall be paid, from appro-
priations to the department, the sum of fifty dollars per
day for each day necessarily employed in the discharge
of his duties as a member of the board, and, in addition
thereeto, he shall be reimbursed for all reasonable and
necessary expenses actually incurred in attending meet-
ings of the board.

Other than the annual meeting for the purpose of elect-
ing a chairman and other officers, the board shall not
meet except for the purpose of hearing and considering
appeals to it by members of the department.

Within fifteen days after a member of the department
has received a statement of charges and an order of
suspension, demotion in rank or discharge by the superintendent, he may appeal the order to the board by filing with the board, or any of its members, a written notice of appeal. Upon receipt of a notice of appeal, the board shall immediately notify the superintendent by sending him a copy of the notice of appeal and set a date and time for a hearing on the appeal. The hearing shall be set within thirty days after the board has received member's notice of appeal and the superintendent and member appealing shall be notified by the board of the date and time at least fifteen days prior to the hearing.

Any member of the department who timely files a notice of appeal, as aforesaid, may be represented by an attorney or by any member of the department or retired member who is receiving benefits from the death, disability and retirement fund of the department. The superintendent may be represented by counsel of his choice and has the burden of proof at the hearing as to the charges which he had found to be the cause or causes for his order of suspension, demotion in rank or discharge. The procedure in any hearing before the board shall be informal and without adherence to the technical rules of evidence required in proceedings in courts of record. All evidence submitted to the board shall be submitted under oath. The chairman, or any member of the board, shall have authority to administer oaths to witnesses presenting testimony at a hearing. The board shall designate a reporter for any such hearing who shall report and transcribe all of the proceedings. The accused member may demand a public hearing on the charges, and in the absence of such a demand, the board may determine whether or not the hearing should be public. Any hearing may be continued, recessed or adjourned by the board.

The superintendent shall provide reasonable office and filing space for use of the board, routine secretarial and clerical assistance and appropriate space for the conduct of hearings. Cost of the reporter in transcribing any hearing shall be paid by the superintendent from available appropriations. At the conclusion of the hearing by the board, the board shall determine whether or
not the superintendent's order shall be sustained. If the board decides that the superintendent's order shall be sustained, it shall issue its decision in writing, with copies thereof being sent by the board to the superintendent and to the appealing member by certified mail, return receipt requested. The member of the department may appeal a decision of the board sustaining the superintendent's order to the circuit court of Kanawha county within sixty days of receipt by the member of a copy of the board's decision, and the court shall hear the appeal upon the record and determine all questions submitted to it on appeal from the decision of the board. In the event any such decision is reversed upon judicial review, which reversal is final, the superintendent shall return the member to his status prior to the superintendent's order, with full payment of any compensation withheld and with full credit for service between the date the superintendent issued his order and the date of the final judicial decision reversing the decision of the board.

The board's decision shall be issued in writing with copies thereof being sent by the board to the superintendent and to the appealing member by certified mail, return receipt requested. A decision by the board to reverse the order of the superintendent is final and not subject to judicial review, and the superintendent shall cancel his order and its effect and return the member to his status prior to the order, with full payment of any compensation withheld and with full credit for service between the date the superintendent issued his order and the date of the board's decision to reverse it.

A hearing shall be conducted by at least three members of the board and the decision of the board shall be made by a majority vote of all of the members of the board. If the board is unable to reach a decision, by a majority vote of all of its members, within sixty days after the completion of the hearing, this fact shall be entered by order of the board in the hearing record and shall have the same effect and be treated in the same manner as provided above for decisions by the board to reverse the superintendent's order.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within disapproved this the 27th day of March, 1972.

Governor